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EXTRAORDINARY

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LOK SABHA

The following Bills were introduced in the Lok Sabha on 17th September, 1954:—

BILL NO. 41 OF 1954

A Bill further to amend the Prevention of Corruption Act, 1947.

Be it enacted by Parliament in the Fifth Year of the Republic of India as follows:—

1. Short title.—This Act may be called the Prevention of Corruption (Amendment) Act, 1954.

2. Amendment of section 5, Act II of 1947.—After sub-section (3) of section 5 of the Prevention of Corruption Act, 1947 the following sub-section shall be inserted, namely:—

“(3a) Where in any trial of an offence punishable under sub-section (2), the accused person is found guilty, such finding being based, either wholly or partly, upon a presumption arising under sub-section (3), the Court shall, while awarding the punishment under sub-section (2), direct that in addition thereto, the pecuniary resources or property disproportionate to the accused person’s known means of income, the possession of which resources or property by the accused or by any person on his behalf in the circumstances laid down under sub-section (3) gave rise to the presumption thereunder be forfeited to the Union or State Government or to the quasi-government administration, as the case may be, under which the accused person was serving”.

STATEMENT OF OBJECTS AND REASONS

The Prevention of Corruption Act, 1947, which came into force on the 11th March, 1947, was intended to secure more effective prevention of bribery and corruption than were already provided for under Chapter IX of the Indian Penal Code.

Although the Act, originally intended to remain in force for three years, was extended from time to time, it has not yet had the desired effect.

The Criminal Law (Amendment) Act, 1952 while seeking a more speedy trial in offences relating to bribery and corruption and providing for special judges to try such cases, made the offer of bribe a substantive offence in itself, thereby deterring bribe-givers from coming forward to give evidence, in spite of provisions regarding the tender of pardons.

It has also been found in practice that corrupt officials who have amassed huge wealth by bribery or habitual acceptance or receipt of bribes are not greatly deterred by punishment of imprisonment or fine under sub-section (2) of section 5 of the Act. It is therefore necessary to provide some deterrent measure which would more effectively check bribery and corruption.

Confiscation of properties of corrupt officers, so far as the possession of such properties has been found sufficient for a presumption of guilt under sub-section (3) of section 5 of the Act would make the provisions of the Act more effective. Hence this Bill.

UMA CHARAN PATNAIK.

BILL NO. 43 OF 1954

A Bill to provide for the appointment of persons to the office of Kazi and for performing and keeping a record of marriages and divorces amongst muslims.

Be it enacted by Parliament in the Fifth Year of the Republic of India as follows:—

1. Short title, commencement and extent.—(1) This Act may be called the Kazis Act, 1954.

(2) It shall come into force at once.

(3) It extends to the whole of India except the States of West Bengal and Jammu and Kashmir.

2. Appointment of Kazis.—(1) In accordance with the provisions contained in this Act State Governments shall appoint persons with proper qualifications as Kazis for presiding at Muslim marriages and performing other religious ceremonies, at which the presence of Kazis is necessary according to Muslim Law and usage and for registering marriages and divorces amongst Muslims.

(2) For the purpose of selection and nomination of candidates for the posts of Kazis, the State Government shall appoint in each District, a committee, called the District Committee.

3. Composition, term and duties of District Committees.—(1) The District Committee shall consist of the following members:—

(a) The District Judge of the District who shall also be the President of the District Committee.

(b) The Collector or the Deputy Commissioner of the District who shall also be the convenor of the District Committee.

(c) One Muslim Vakil or Advocate elected by the Muslim Vakils and Advocates of the District.

(d) Five members to be elected by the Muslim members of the Municipal Boards, Notified Areas, and Town Areas of the District.

(e) Two members to be elected by the Muslim members of the District Board of the District.

(f) One *Shia Alim* elected by the *Shia Ulemas* of the District mentioned in Schedule B to this Act.

(g) Two *Ulemas* elected by the *Ulemas* of the District holding certificates of Colleges mentioned in Schedule A to this Act.

(h) All the Muslim members of the Legislative Assembly, if any, and Legislative Council, if any and of Parliament representing that District.

(2) The members except those who are *ex-officio* ones shall hold office for a period of seven years but in case of a seat falling vacant during this period the vacancy shall be filled up by the election of a member from the class to which the late member belonged and such member shall hold office for the remaining period.

(3) The quorum of the District Committee shall be seven.

(4) The duties of the District Committee shall be:

(a) to make recommendations to the State Government about the number of *Kazis* necessary for the District and their proposed jurisdictions,

(b) to recommend to the Local Government the names of persons, with requisite qualifications, who are to be appointed as *Kazis*,

(c) to supervise the work of *Kazis* and tribunals of the District and to make occasional reports about their work to the Government,

(d) to approve of the appointment of *Naib Kazis* made by *Kazis* under section 6.

4. Procedure for the appointment and removal of *Kazis*.—(1) The *Kazi* shall be appointed by the State Government on the recommendation of the District Committee, and shall not be removable from his office, but for incapacity or misconduct in the discharge of his public duties, or acts of profligacy in his private conduct, proved to the satisfaction of the State Government.

(2) The District Committee shall report to the State Government every instance in which it may appear to them that any *Kazi* in the District is incapable, or in which it may be proved to their satisfaction that he has been guilty of negligence or misconduct in the discharge of his public duty or of acts of profligacy, in his private conduct.

5. Qualifications for the post of a *Kazi*.—(1) For an appointment to the post of a *Kazi* a person must be educated, honest, conscientious

and well versed in questions relating to marriages, divorce and dissolution of marriages:

Provided that he shall have obtained a certificate from any of the Islamia Schools mentioned in Schedule A to this Act, if he is a *Sunni* or from any Islamia Schools mentioned in Schedule B of this Act, if he is a *Shia*. The certificate would be to the effect that he is well versed in the matters of marriages and divorce.

(2) In making appointments to the post of a *Kazi*, preference shall be given to a person who in addition to the qualification mentioned in sub-section (1) is held in esteem by the Muslims of the city, town or *purganah* in which he is to hold office, due to the status of his family or belongs to a family in which the post of *Kazi* had been hereditary in the past.

6. Appointment, qualifications and removal of Naib Kazis.—(1) Subject to the approval of the District Committee a *Kazi* shall have power to appoint one or more *Naib Kazis*, provided that in case the *Kazi* be a *Sunni* he shall employ as many *Shia Naib Kazis* as necessary and similarly if the *Kazi* be a *Shia* then he would employ the necessary number of *Sunni Naib Kazis*.

(2) A *Naib Kazi* shall be required to be literate and conversant with questions relating to law of marriages.

(3) A *Kazi* shall have power to remove his *Naib Kazi*.

7. Maintenance of records of marriages and divorces.—(1) The *Kazi* either by himself or through his *Naib Kazi* shall keep a regular record of marriages taking place within his jurisdiction, giving the names of the parties to the marriage; of the guardian of the marriage, if any, of the *vakil*, if any, of the witnesses to the marriage, and of the person who performed the *nikah* ceremony, and the record shall be signed by all of them. The age of the parties, the fact as to whether the marriage is a first or second one, the amount of dower, with detail of prompt and deferred, the date of marriage and the date of entry shall also be recorded. A copy of the record shall be given to each of the parties.

(2) Subject to the provisions of sub-sections (2) and (3) of section 8 when an entry is made in the record of *Kazi* regarding marriages which have not been performed by the *Kazi* or one of his *Naibs* all the details mentioned in sub-section (1) shall be filled up but the record may be signed by the parties and their guardians only, if any:

Provided that before making the entries the *Kazi* shall satisfy himself as to the factum of marriage, and would make remarks to the effect in the register as to whether he considers it to be genuine or otherwise. For this purpose the *Kazi* may get the record signed by such other persons as were present at the time of marriage.

(3) The *Kazi* shall further maintain a register of divorces recording the cases of a divorce by the husband, '*Talak-e-safweez*' and '*Khula*' separately in accordance with notes made under this Act.

8. Registration of Marriages and divorces and the fees.—(1) The fees for every marriage shall be rupees five. The parties to the marriage, however, may give any larger amount to the *Kazi* at their option.

(2) If in spite of invitation, a *Kazi* or *Naib Kazi* fails to attend a marriage, and the marriage is celebrated in their absence, or their presence is not required due to their being *Shia* while the parties celebrating the marriage are *Sunni* or due to their being *Sunni* while the parties are *Shia*, the parties to the marriage and their guardians, if any, shall be entitled to get entries made in the record of the *Kazi* without payment of any fee within fifteen days of the marriage, and with the payment of rupees five thereafter:

Provided that no entries shall be made after the lapse of thirty days after the marriage.

(3) If a marriage is celebrated without the information given to *Kazi* or *Naib Kazi* by some other person the parties to the marriage and their guardians, if any, shall be entitled to get entries made in the record of the *Kazi* after payment of rupees ten within fifteen days of marriage and with payment of twenty rupees thereafter:

Provided that no entry shall be made after the lapse of thirty days of the marriage.

(4) Any person placing reliance or leading evidence in any civil or criminal suit in respect of a marriage which was celebrated after coming into force of this Act, and which has not been entered in the register of the *Kazi*, shall have to pay a penalty of rupees thirty before he can be allowed to place reliance on or lead evidence in respect of such marriage.

(5) The fee for registration of a divorce shall be rupees five.

9. Seal.—Every *Kazi* shall use a seal having the following inscription:—

"The seal of the *Kazi* of _____ "

10. Index.—(1) Every *Kazi* shall keep in his office a current index of the contents of registers maintained by him, and every entry in such index shall be made, as far as practicable, immediately after the *Kazi* has made the entry in such registers.

(2) The index mentioned above shall contain the name, place of residence and fathers' name of each party to every marriage or divorce and the date of registration. It shall also contain such other particulars, and shall be prepared in such form, as may be prescribed by the rules.

11. Inspection and copies of entries in Registers.—Subject to the payment of the fees prescribed, the index here-in-before mentioned shall be open to inspection by any person applying to inspect the same, and the copies of the entries in any of the registers shall be given to all persons applying for such copies.

Such copies shall be signed and sealed by the *Kazi*.

12. Disposal of Fees.—The fees recovered by a *Kazi* under sections 8 and 11 of the Act, may be retained by him as his lawful remuneration:

Provided that he shall have to pay the remuneration of the *Naib Kazis*, if any, employed by him, and the costs of the seals and the registers kept by him under the provisions of this Act or the rules made thereunder.

13. Holding of salaried appointment.—A *Kazi* shall not be debarred from holding any other salaried appointment: provided that it shall not interfere with the proper discharge of his duties as *Kazi*, and provided also that he obtains the previous permission of the District Committee.

14. Power of the State Government to make Rules.—(1) The State Government may make rules consistent with this Act for the purpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government shall have power to make rules with reference to the following matters,—

(a) for the election of the members of the District Committee under section 3;

(b) for the selection and nomination of the *Kazis* under section 4;

(c) for the holding of the meetings of the District Committee and the procedure to be adopted by the Committee;

(d) the number of registers to be maintained by the *Kazis*, the entries in these registers, the method of search, and of giving copies of the entries in registers, the fees to be paid for inspection and copying, the place of the custody of the completed registers.

15. Power of the State Government to alter the Act.—The State Government shall have power to make alterations in this Act in the following matters:—

(a) Making necessary amendments, alterations or additions to the entries required to be made in the records under section 7.

(b) Increasing or decreasing the fees prescribed in section 8.

(c) Making necessary amendments, alterations in the list of Schools or Colleges given in Schedule A to this Act.

16. Repeal of Act XII of 1880.—The *Kazis* Act, 1880 (Act XII of 1880) is hereby repealed.

SCHEDULE A

(Vide section 5)

List of Schools of Sunnis

Darul Ulum, Deoband.

Mazahirul Ulum, Saharanpur.

Madarsah Khankah Imdadia, Thana Bhawan.

Madarsah Arabic, Amroha.
Madarsah Arabic, Gulauti.
Madarsah Arabic, Budaon.
Madarsah Manzarul Islam, Bareilly.
Madarsah Illahiat, Kanpur.
Madarsah Arabic, Farangi Mahal, Lucknow.
Arabic Madarsah, Allahabad.
Madarsah Shahi Masjid, Moradabad.

SCHEDULE B

(*Vide section 5*)

List of Schools of Shias

Madarsatul Waezeen, Lucknow.

Madarsa of Shia Theology, Amroha.

STATEMENT OF OBJECTS AND REASONS

According to Muslim Law the decree of a *Kazi* duly appointed by the State is necessary for certain socio-religious and religious matters such as dissolution of marriages. In addition to these the *Kazi* is to preside and perform certain ceremonies such as the marriage ceremony and is to conduct the *Juma* and *Id* prayers. In the pre-British days in India, *Kazis* were appointed by the State for the cities, principal towns and in the *purganahs* for performing all the duties allotted to them by the Muslim Law. On the inception of the British Rule their status was recognised by the British Government also. Regulation XXXIX of 1793 was the first one in this connection. It was intended to provide for the recognition and appointment of *Kazis* and *Kazi-ul-Kuzzat* in Bengal.

Gradually similar Regulations and Acts were passed for other provinces also. In addition to the *Kazis*, however, there used to be Hindu and Mohammadan Law Officers attached to the courts to help those courts in the administration of Hindu and Mohammadan Law respectively—the courts at the time having had no training in those branches of law. This had become necessary as the East India Company was gradually transferring the administration of justice from the hands of Indians to those of the English Judges—and was thus necessarily a transitory stage. It appears that in 1864 Hindu and Mohammadan Law Officers were deemed to have served their purpose in having given the necessary training to the English Judges and having produced sufficient quantity of legal precedent to guide future courts. They were no more required and were thus removed by Act XI of 1864. But along with the Hindu and Mohammadan Law Officers, the Regulations and Acts relating to *Kazis* were also repealed.

The Late Sir Ahmad Khan brought a Bill in the Legislative Council in 1880, which was passed as Act No. XII of 1880 and was named *Kazis Act*. That Act authorized the Local Government to appoint *Kazis* for any particular area on the desire of the Muslim

community living in that area, but gave him absolutely no powers nor his activities were put under any proper control or supervision.

Thus it is only to meet a well recognized and old standing need of the Muslim community that this Bill is being introduced. Its scope is very much restricted as it confines the functions of a Kazi to the solemnisation of marriages and registering them and registering divorces.

MOHAMMAD AHMED KAZMI.

M. N. KAUL,
Secretary.